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JOHN F. DAVIS, CLER

No. 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STEELWORKERS OF AMERICA, AFL-CIO
Petitioner

v.

R. H. BOULIGNY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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In the course of its preparation for oral argument, petitioner discovered that Congress, in late 1964, amended 28 U. S. C. A. § 1332(c) in a manner which expressly recognizes that unincorporated associations may be citizens, and that their citizenship is in the State where they have their principal place of business. Pub. Law 88-439, 78 Stat. 445 (Approved, August 14, 1964).

The amendment adds the following proviso to § 1332(c) (emphasis supplied):

> "Provided further, that in any direct action against the insurer of a policy or contract of liability insurance, *whether incorporated or unincorporated,* to which ac-

> tion the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business."

The amendment was adopted to eliminate the enormous burden placed on certain federal district courts by reason of the Louisiana and Wisconsin "direct action" statutes. Theretofore, in accidents between two Louisiana citizens, the plaintiff could obtain diversity jurisdiction by suing the out-of-State insurance company directly, without joining its insured. By the amendment, Congress deemed the insurer a citizen of the State of which its insured is a citizen, in addition to the other State or States of which it was already a citizen.

The amendment deals with both incorporated and unincorporated insurers. And it recognizes that, apart from the additional citizenship newly conferred, such an insurer is already a citizen of "any State by which the insurer has been incorporated and of the State where it has its principal place of business." In the case of an unincorporated insurer, of course, the amendment reflects Congress' understanding that it is already a citizen "of the State where it has its principal place of business," since there is no State of incorporation.

Congress thus has expressly confirmed that under Section 1332(a)(1), the basic diversity grant, an unincorporated association may be a citizen, and that its citizenship is in its principle place of business. This is the interpretation which we have advanced and which we believe to have been adopted by this Court in *Puerto Rico* v. *Russell*.

In view of the short time between the filing of this reply brief and the scheduled argument date, counsel for pe-

titioner telephoned counsel for respondent on Tuesday, October 19, 1965, and advised him of the substance of this reply brief.

Respectfully submitted,

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